IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC PP. NO. 1031-36/2006

Judgment delivered on: October 25,007

Mrs. Neelam Devi & Ors. ..... Appellant
Through: Mr. O.P.Mannie, Advocate

versus

Sh.Dhananjay Kumar & Anr. ..... Respondent
Through: Mr.A.K.De, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

Challenge in the present appeal has been made to the impugned Award passed by the Tribunal mainly on two grounds that the insurance company has not been made liable to satisfy the Award amount and secondly compensation granted by the Tribunal is on the lower side. The facts of the case in brief are that one Shri Shambu Saran was travelling as a pillion rider on a motor cycle bearing registration No. DL-7SL-0291, which was owned and driven by Shri Dhananjay Kumar, respondent No. 1 herein. The said motor cycle when reached near Sindhu Village Mor met with an accident resulting in fatal injuries to the said pillion rider Mr. Shambu Saran who ultimately succumbed to his injuries on 24th June, 2005 near GTB hospital. A criminal case vide FIR No. 238/2000 was registered at P.S. Alipur. The deceased was aged about 45 years and was earning a sum of Rs. 40,000/- from his business. The deceased was survived by his widow and 4 children besides his mother. The claim petition was contested by the insurer of the vehicle while respondent No.1 did not choose to contest the same. The Tribunal after considering the pleadings of

the parties and evidence led by them had awarded a sum of Rs. 3,68,669.60 against the claim amount of Rs. 10 lakhs. Being not satisfied with the quantum of compensation as well as exoneration of the insurance company, the appellant has preferred the present appeal assailing the said Award of the Tribunal.

I have heard learned counsel for the parties at considerable length.

Counsel for the appellant has confined his arguments only to claim modification of the impugned judgment to the extent to make the Insurance Company liable to pay the compensation amount to the appellants. Counsel for the appellants contended that this Court in FAO NO. 517/2001 has already taken the view holding the Insurance Company liable even for the death of a pillion rider.

Counsel for the appellant contended that although the Supreme Court in **United India Insurance Co. Ltd., Shimla Vs. Tilak Singh & Ors. 2006 (4) SCALE 67** has taken a view that the Insurance Company owe no liability towards the injuries

suffered by the deceased who was a pillion rider unless the insurance policy specifically covers the risk for the death or bodily injury of such a pillion rider but before the Hon'ble Apex Court, Notification duly issued by the Tariff Advisory Committee dtd. 13.3.1978 was not placed and the absence of the same led to the said finding by the Supreme Court. The counsel, therefore, urged that this court in FAO No. 517/2001 decided on 14.5.2007 has made reference to the said Notification and has observed that the Insurance Company did not disclose the existence of the said Notification before the Apex Court. The reference of the said Notification has also been made by the Kerala High Court in **Oriental Insurance Company Ltd. Vs. Daniel, 2000 ACJ 1391** and also by the Himachal Pradesh High Court in **United India Insurance Co. Ltd. Vs. Prem Singh & Ors. 2001 ACJ 1445**. This court in the said order further observed that the Notification in question incorporates a deemed amendment of policies issued w.e.f. 25.3.77, mandating that the death or bodily injury to a pillion rider would be at par with a claim of a third

party. The Counsel for the appellant, thus, contends that in view of the said order of this Court, the finding of the Tribunal is legally impermissible and cannot be upheld.

Per contra counsel for the respondent contended that in view of the decision of the Supreme Court in **Tilak Singh's case (Supra)**, no reliance can be placed on the judgment of this Court and therefore, no fault can be found with the findings given by the Tribunal.

Counsel for the respondent thus submitted that the pillion rider unless specifically covered under the policy cannot be treated as a third party.

I have gone through all the said judgments cited by the counsel for the parties.

Counsel appearing for the Insurance Company failed to point out as to whether the said Notification of instructions of the Tariff Advisory Committee was brought to the notice of the Apex Court in **Tilak Raj's case (Supra)**. Counsel for the Insurance Company has also not disputed the factum and

existence of the said instructions of the Tariff Advisory Committee as have been referred to by the learned Single Judge of this Court in FAO No. 517/2007.

The Division Bench of Himachal Pradesh High Court in **Prem Singh's case (Supra)** has held the Insurance Company liable for the injuries caused to the pillion rider on the same very basis of instructions of Tariff Advisory Committee dated 13.3.78. It would be appropriate to refer to relevant paras of the aforesaid judgment as under:

> "16. We, however, need not go into the question. We find that compensation in respect of the pillion riders was considered by the Tariff Advisory Committee and it was decided tha death of or bodily injury to any person including person conveyed in or on the motor cycle would be covered provided such person is not carried for hire or reward. These instructions were made effective w.e.f 25.3.1977. The Tariff Advisory Committee had directed:
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> "All existing policies should be deemed to incorporates this amendment automatically irrespective of the fact whether it is an 'Act policy' or a 'comprehensive policy'.
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> 17. We requested Ms. Devyani Sharma, learned counsel for the appellant insurance

> company to verify if the instructions of the Tariff Advisory Committee dated 13.3.78 were followed by the appellant insurance company. Ms. Devyani Sharma, on instructions from the appellant insurance company, fairly conceded that the instructions of the Tariff Advisory Committee were followed by the appellant insurance company. These instructions were noticed by a Division Bench of Kerala High Court in Oriental Insurance Co. Ltd. Vs. Daniel, 2000, ACT 1391 (Kerala)
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> 18. In this view of the matter, we hold that pillion rider is covered under the Act policy, Exh. PX, and insurance company is liable to indemnify the insured."

It would be thus evident that with the above instructions of the Tariff Advisory Committee dated 13.3.78, the risk of the pillion rider is fully covered under the insurance policy whether the same is an 'Act policy' or 'comprehensive policy', provided such person is not carried for hire or reward.

In view of the said decision, unless the Insurance Company comes out with a case that the said instructions of the Tariff Committee were cancelled or modified, there cannot be any justification or plausible reason to ignore the instructions of the Tariff Advisory Committee. It was rather incumbent upon the

Insurance Company to have placed the said instructions of Tariff Advisory Committee before the Tribunal during the trial of the case and even in the present appeal also, no such instructions were brought on record.

Be that as it may, reliance to these very instructions has been made by the Division Bench of Himachal Pradesh High Court and by the Kerala High Court as well as by this Court. Therefore, it can be safely assumed that these instructions exist and they are legally binding upon the Insurance Company.

Moreover, in the present case, the accident took place in 2005 and on that date the Act of 1988 was in full force. Therefore, the liability of the Insurance Company has to be adjudged under Section 147 of Motor Vehicles Act, 1988. A bare perusal of the said Section 147 would clearly reveal that the liability of the Insurance Company is now unlimited. Moreover, the words " any person" used in Section 147 (1) (b) (i) of the Act would include a pillion rider.

In the light of the above discussion, I find myself in

agreement with the contentions raised by the counsel for the appellant that the Insurance Company cannot resile from its liability to pay the award amount to the appellants. The order of the Tribunal is thus modified to that extent and the respondent/Insurance Company is held liable to pay the award amount in terms of the impugned award dated 22.8.2006, with interest @ 12% per annum from the date of institution of the claim petition till realisation.

With these directions, appeal stands disposed of.

October 25, 2007 **KAILASH GAMBHIR J.**
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